



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

JUN 17 2011

Via e-mail

Mr. Ken Deeg
Friends of Clear Creek Management Area
Timekeepers MC

Re: 11-FOI-00017

Dear Mr. Deeg:

This is a partial response to your e-mail message dated January 21, 2011, which was received by the Office of Inspector General (OIG) on that same date, in which you ask for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You ask for a copy of an OIG report of investigation, "including all attached/supporting documents, notes, photos, voice recordings, video recordings, original information that led to the investigation/request for investigation."

A search was conducted and we located information responsive to your request. OIG is starting a "rolling production" of the responsive documents. Enclosed is a copy of the OIG Case Initiation Report (2 pages), OIG Closing Report of Investigation (ROI) (13 pages), and Attachment 2 (2 pages). Attachment 1 is a public document and is located on the Environmental Protection Agency (EPA) website:

<http://www.epa.gov/region9/toxic/noa/clearcreek/pdf/CCMARiskDoc24Apr08-withoutAppxG.pdf>

Deletions have been made of information that is exempt from release under the provisions of 5 U.S.C. §§ 552(b)(5), (b)(6), and (b)(7)(C). These sections exempt from disclosure items that pertain to: (1) inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency; (2) personnel and other similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) records of information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy. Exemption (b)(5) was used to protect information pertaining to the Investigative Plan, which outlines the strategy and deliberative process of how OIG will proceed with a case. Exemption (b)(5) was also

used on information in the Investigative Activity Report (IAR). The IAR reflects the Agent's interpretations of statements made by witnesses/interviewees. These statements are not verbatim transcripts of the witness/interviewees and reflect the Agent's opinion on the issues discussed and information the Agent deemed relevant to the investigation. Exemptions (b)(6) and (b)(7)(C) were used to protect the personal privacy interests of witnesses, interviewees, middle and low ranking federal employees and investigators, and other individuals named in the investigatory file.

The Closing Report of Investigation lists 23 attachments. Please review the listing and notify our office of any attachments that you do not wish to receive within 20 days from the date of this letter.

Attachment 3 was provided by the complainant and contains an e-mail message created by the EPA. From my perusal of the Friends of Clear Creek Management Area website, I noticed a number of e-mail and other correspondence from the EPA. Please let me know whether you have a copy of this message. For those documents created by the EPA or the BLM, if you already have copies of these documents, we will not reproduce them. However, if you do not have copies of these documents, they will be forwarded to EPA and BLM, along with a copy of your request, for their review and direct response to you.

If you disagree with this response, you may appeal the decision by writing to the FOIA Appeals Officer, U.S. Department of the Interior, 1849 C Street, N.W., MS-6556, Washington, D.C. 20240, no later than 30 workdays after the date of the final response. Due to disruptions to the mail service in the Washington, D.C. area, you may want to consider an alternative means of communicating with the Department of the Interior, e.g., facsimile, e-mail, Federal Express, etc. There may be a delay in our receipt of mail sent through the U.S. Postal Service. The FOIA Appeal Officer's facsimile number is (202) 208-6677. Your appeal should be filed in accordance with the regulations set out in 43 C.F.R. §§ 2.28-2.32, a copy of which is enclosed.

Please contact me at (703) 487-5436, if you have any questions concerning this response.

Sincerely,



Sandra Evans
OIG FOIA Officer

Enclosures



**United States Department of the Interior
Office of Inspector General**

INVESTIGATIVE ACTIVITY REPORT

Case Title [REDACTED]	Case Number [REDACTED]
Reporting Office Sacramento, CA	Report Date February 16, 2010
Report Subject Case Initiation Report	

BASIS OF INVESTIGATION

[REDACTED], [REDACTED], alleged that Bureau of Land Management (BLM)-Hollister Field Office (HFO) [REDACTED] influenced U.S. Environmental Protection Agency (EPA) officials to remove or change wording included in their Clear Creek Management Area (CCMA)-Asbestos Exposure and Human Health Risk Assessment (AEHHRA), dated May 2008, while still in draft to provide support for CCMA to remain closed for off-road vehicles, but not for hikers. Also, that based on recommendations listed on a BLM-HFO CCMA Environmental Impact Study report, dated December 2009, BLM-HFO spent \$1.6 million to construct a decontamination facility at CCMA, even though CCMA would probably remain permanently closed.

POTENTIAL VIOLATION(S)

5 C.F.R. 2635, Inducement or Coercion of Benefits

Executive Order 12674, Principles of Ethical Conduct for Government Officers and Employees

AFFECTED DOI PROGRAM(S)

Bureau of Land Management (BLM)

POSSIBLE SUBJECT(S)

[REDACTED] Hollister Field Office, BLM

RELATED INVESTIGATION(S)/AUDIT(S) - (if applicable)

[REDACTED]

Reporting Official/Title [REDACTED] / Special Agent	Signature [REDACTED]
---	--------------------------------

[REDACTED]

INVESTIGATIVE PLAN

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. Interview potential witnesses.
5. [REDACTED]
6. Prepare investigative report with appropriate referrals.



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

REPORT OF INVESTIGATION

Case Title [REDACTED]	Case Number [REDACTED]
Reporting Office Sacramento, CA	Report Date August 31, 2010
Report Subject Closing Report of Investigation	

SYNOPSIS

We initiated our investigation in February 2010 after receiving information from [REDACTED] that Bureau of Land Management (BLM)-Hollister Field Office (HFO) [REDACTED] influenced U.S. Environmental Protection Agency (EPA) officials to remove or change wording included in their Clear Creek Management Area (CCMA)-Asbestos Exposure and Human Health Risk Assessment (AEHHRA), dated May 2008, while still in draft to provide support for CCMA to remain closed for off-road vehicles (OHV). In addition, based on recommendations listed on the BLM-HFO CCMA Environmental Impact Study (EIS)/Resource Management Plan (RMP), BLM-HFO spent \$1.6 million to construct a decontamination facility at CCMA, even though the CCMA would probably remain permanently closed.

During our investigation, it was also brought to our attention that in May 2008, subsequent to BLM's closure of CCMA, California's San Benito County also closed access to the county roads inside CCMA. Per their jurisdiction, according to their interpretation of California Desert District's Revised Statute (RS) 2477, SBC passed a resolution in March 2010 to reopen the county roads within CCMA. This matter is currently being debated between BLM and San Benito County.

In an attempt to substantiate the allegations, we interviewed officials from the U.S. Department of the Interior (DOI), EPA, and California Department of Toxic Substance Control (Cal/DTSC). Additionally, we obtained and reviewed pertinent records.

The allegations against [REDACTED] in this matter were not substantiated. Multiple agencies, to include the California Air Resources Board (CARB) and Cal/DTSC, were involved in the review of the CCMA-AEHHRA report, and agreed with the report findings. This matter will be closed with no further investigative steps conducted.

Reporting Official/Title [REDACTED] Special Agent	Signature
Approving Official/Title David Brown / Special Agent in Charge	Signature

[REDACTED]

BACKGROUND

EPA's CCMA-AEHHRA report, dated May 2008, provides the following information (Attachment 1):

"The CCMA covers approximately 75,000 acres in San Benito and Fresno Counties in California. It includes part of the New Idria Formation, a serpentine rock body which contains a 31,000 acre outcrop of naturally occurring asbestos. BLM has designated the New Idria portion of the CCMA as the Serpentine Area of Critical Environmental Concern (ACEC). Recreational use of CCMA by hikers, campers, hunters, botanists, rock collectors, and OHV users disturbs soils of the ACEC, which have high levels of asbestos, creating the potential for asbestos exposure and increased health risk. The BLM is the agency responsible for administering the public lands of CCMA.

In 1991, EPA signed the Record of Decision (ROD) for the Atlas Asbestos Mine Superfund site, which selected the cleanup remedy for the Atlas Mine, an abandoned asbestos mine located within the CCMA. In the ROD, EPA designated the CCMA as one of four geographic areas that comprise the site, but did not propose a cleanup action for the CCMA. Instead, EPA stated that it would evaluate whether the BLM's plans for management of CCMA were adequate to protect public health from exposure to asbestos found in the CCMA's soil and air.

In 2004, as part of the process of evaluating the Atlas site for possible desisting from the federal National Priorities List, EPA Region 9 initiated an AEHHRA for the CCMA. The goal of the assessment was to use current asbestos sampling and analytical techniques to update the 1992 BLM Human Health Risk Assessment (HHRA) and provide more robust information to BLM on the asbestos exposures from typical CCMA recreational activities and the excess lifetime cancer risks associated with those exposures. The assessment was conducted consistent with EPA policy and guidance, including the Risk Assessment Guidance for Superfund (RAGS), and with the encouragement of the California Air Resource Board (CARB) and Cal/DTSC. Data for the exposure assessment was collected using activity-based sampling, simulating typical CCMA recreational activities and collecting samples from the breathing zone of participants, and the samples were analyzed using transmission electron microscopy (TEM). In addition, as families are frequent visitors to CCMA, the assessment evaluated exposures and risks to children as well as adults.

After the exposure data was collected for the various individual activities, the activities were used to calculate risk for seven CCMA use scenarios. The scenarios are designed to reflect the spectrum of activities an individual would participate in during a typical day, weekend, or work year visit to CCMA, e.g., driving in, riding motorcycles, camping and driving out. The report provides excess lifetime cancer risk estimates for the seven scenarios. The first five scenarios reflect recreational exposures. The last two scenarios reflect exposure for rangers or other workers."

Relevant Regulations

The following Standard for Ethical Conduct for employees of the Executive Branch was determined to be relevant to this investigation:

- EXECUTIVE ORDER 12674-THE FOUNDATION FOR ETHICAL BEHAVIOR
- 43 C.F.R. SUBPART 1610-RESOURCE MANAGEMENT PLANNING

DETAILS OF INVESTIGATION

Our investigative findings are organized into three sections. The first section addresses allegations that [REDACTED] influenced EPA officials to remove or change wording included in their CCMA- AEHHRA, dated May 2008, while still in draft to provide support for CCMA to remain closed for OHVs. The second section addresses BLM's current EIS/RMP, to include the construction of a decontamination facility at CCMA. Lastly, the third section addresses the county roads located inside CCMA, and the debate between BLM and San Benito County, CA, concerning ownership and management of those roads.

Allegations regarding EPA's CCMA-AEHHRA

This investigation was initiated after [REDACTED] called this office stating that, [REDACTED] obtained emails from [REDACTED] to EPA officials concerning the review of EPA's CCMA-AEHHRA report while still in draft (Attachment 2). After reviewing the emails, [REDACTED] opined that [REDACTED] was requesting EPA to remove or change wording included in the EPA CCMA-AEHHRA report. Subsequent to the telephone call, [REDACTED] provided this writer a copy of an email from [REDACTED] to EPA's Air Division Senior Science Advisor [REDACTED] Superfund Sites Remedial Project Manager [REDACTED] Media Relations Officer [REDACTED] and others, dated April 11, 2008 (Attachment 3). In the email, [REDACTED] cited the following sentence, which was included in the draft EPA CCMA-AEHHRA report dated February 2008: "This uncertainty [related to the toxicity parameters of the risk assessment] could mean that the actual risks could be much lower than those estimated in the CCMA assessment and perhaps zero (Attachment 4)." [REDACTED] wrote that the statement placed some doubt as to the adequacy of the model used. Further, that the public would ask BLM officials why an emergency decision (closure of CCMA) was based on a model that may not accurately portray the risks to the public. (*Agent's Note: The fragment "perhaps zero" was subsequently removed from EPA's final report [See Attachment 1.]*)

Witness Interviews

Deputy Regional Solicitor [REDACTED] and Assistant Regional Solicitor [REDACTED] Office of the Solicitor (SOL), DOI, were interviewed regarding their legal opinion concerning BLM's immediate temporary closure of public land within the CCMA as a result of EPA's CCMA-AEHHRA report (Attachment 5). They were also interviewed regarding whether officials from BLM acted inappropriately by actively reviewing the draft EPA report, and providing comments and edits to EPA concerning the report before it was published. [REDACTED] and [REDACTED] opined that it was appropriate for BLM to actively participate in the review of EPA's CCMA-AEHHRA report, while in draft, as long as BLM's involvement was concerning management activities and not the alteration of scientific data. They did not consider it unusual for BLM to review and comment on a report such as this one, because the report concerned public lands managed by BLM. EPA was ultimately the deciding authority regarding the information that was included in the report.

[REDACTED] and EPA Region 9 Toxicologist [REDACTED] were interviewed concerning their involvement with EPA's CCMA-AEHHRA (Attachment 6). In the summer of 2007, [REDACTED] was assigned as the Remedial Project Manager for EPA's CCMA-AEHHRA, specifically the Atlas Mine Site, which is located inside the CCMA. As a Regional Toxicologist and Human Health Toxicologist, [REDACTED] and [REDACTED] team were responsible for authoring EPA's CCMA-AEHHRA. Because of [REDACTED] expertise and experience with asbestos, [REDACTED] main responsibility for the CCMA-AEHHRA was to

provide technical assistance to the toxicologists and the project officers. [REDACTED] stated that EPA's involvement with the CCMA was only to conduct the CCMA-AEHHRA. BLM is ultimately responsible for deciding how to better manage the CCMA after receiving the results from the assessment.

[REDACTED] stated that because asbestos was a controversial subject during this assessment, EPA set up an internal technical review workgroup (TRW), which he co-chaired, to review the assessment. EPA also set up an inter-agency review workgroup, which included DOI, the National Institute for Occupational Safety and Health (NIOSH), the Occupational Safety and Health Administration (OSHA), and the Mine Safety and Health Administration (MSHA) as members to review the risk assessment. There were also some California state agencies that reviewed this assessment because the measurement thresholds used by the state were different than the ones used by EPA.

[REDACTED] stated that, in December 2007, EPA completed the first draft report concerning CCMA's AEHHRA. BLM received a copy of this and other draft reports, but only after EPA's TRW and other independent entities, such as Cal/DTSC, reviewed and approved them. Even though BLM was not part of the inter-agency review workgroup, BLM's toxicologist [REDACTED] and other BLM officials were allowed to provide comments concerning the draft copies of the report back to EPA. BLM provided comments to EPA concerning the draft report, related to how BLM managed the CCMA. When BLM provided comments concerning technical data, EPA reviewed the comments to determine whether the comments were legitimate and whether EPA missed some data. [REDACTED] assured that EPA did not change any technical data within the report based on a BLM comment. BLM had no veto power on data contained within the report because the assessment was EPA's technical document, based on EPA's technical expertise. BLM did not have the ability to rewrite the assessment or overrule any of EPA's technical decisions. [REDACTED] reiterated that, because of their ethical principles, EPA officials would not allow BLM to change any of EPA's technical information without due process.

[REDACTED] stated that most of the comments BLM submitted were asking for explanations on what some of the results of the assessment meant. [REDACTED] stated that EPA had to make sure that the report was in compliance with EPA's technical data and policies. If EPA was to change any data within the report that created an impact, they would have had to start over from the beginning and go through the entire process again.

[REDACTED] explained that BLM decided to close CCMA before EPA's final report was issued in May 2008 because EPA officials had already showed them several measurements that showed the risks of asbestos exposure in the area. EPA wanted to make sure the report was refined and reviewed by all responsible entities before the closure went into effect. [REDACTED] stated that EPA's results showed that significant asbestos exposures were occurring at CCMA and agreed that closing the area was one way to manage the risks. [REDACTED] and [REDACTED] denied that BLM officials attempted to influence them to change data within the CCMA-AEHHRA report to support the closure of the CCMA.

Cal/DTSC Senior Toxicologist [REDACTED] was interviewed regarding [REDACTED] involvement in the review of EPA's CCMA AEHHRA (Attachment 7). [REDACTED] explained that in 2004, as part of an Interagency Personnel Act (IPA) between Cal/DTSC and EPA, [REDACTED] was tasked with reviewing EPA's CCMA AEHHRA report as an independent reviewer. [REDACTED] noted that the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) required that all parties affected by an AEHHRA be given an opportunity to review and comment on any reports produced by the agency conducting the assessment. [REDACTED] identified CARB, Cal/DTSC, BLM, and EPA, as some of the agencies that were involved in the development and review of the CCMA-AEHHRA report. Since

BLM was responsible for managing the CCMA, [REDACTED] did not think that a conflict of interest existed by BLM officials reviewing the assessment report. [REDACTED] was not aware of any BLM officials attempting to influence EPA officials to change data within the CCMA-AEHHRA report to support the closure of the CCMA.

Subsequent to [REDACTED] interview, [REDACTED] provided this office with the following documents:

- A letter from the office of Cal/DTSC [REDACTED] to Off-Highway Motor Vehicle Recreation (OHMVR) [REDACTED], dated April 22, 2010 (Attachment 8). This letter explained to [REDACTED] that, throughout the CCMA-AEHHRA, EPA included BLM, Cal/DTSC, and the Office of Environmental Health Hazard Assessment (OEHHA) for assessing activity based sampling scenarios in the scoping of typical recreational uses at CCMA. Cal/DTSC reviewed the results from the activity based sampling and supported EPA's conclusions concerning unacceptable risks from asbestos exposure, and found that implementation of mitigation measures were necessary to reduce exposure to airborne asbestos generated by human activities.
- A letter from the office of OEHHA [REDACTED] to [REDACTED], dated May 4, 2010 (Attachment 9). This letter explained to [REDACTED] that OEHHA found the methodology and conclusions contained in EPA's CCMA-AEHHRA report to be scientifically justified. The human activity at CCMA, in particular the entertainment of asbestos fibers into the air from recreational vehicles, poses an elevated cancer risk. OEHHA also agreed with the findings identified in the aforementioned letter from [REDACTED] to [REDACTED] dated April 22, 2010.

Interview of [REDACTED]

We confronted [REDACTED] with the allegations reported to this office against [REDACTED] (Attachment 10). [REDACTED] participated in this interview via a telephone call. [REDACTED] explained that the final report for EPA's CCMA-AEHHRA was completed in April 2008. However, BLM officials were briefed on the findings of the report in February 2008. [REDACTED] office was responsible for taking the results of the report and including them in the EIS/RMP for the CCMA. [REDACTED] stated that [REDACTED] was one of the peer reviewers of the report, which [REDACTED] coordinated with [REDACTED]. [REDACTED] noted that, during the time that the CCMA-AEHHRA report was being reviewed, there were no written guidelines or processes available concerning peer review of those types of assessment reports.

[REDACTED] explained that, according to a 2004 agreement between EPA and BLM, EPA supplied BLM with a higher quality of information than the information provided in previous studies by BLM and some universities concerning the asbestos exposure at CCMA. The idea of this agreement was that BLM and EPA would act as cooperating agencies and would work together throughout the assessment and report processes.

[REDACTED] stated that the first draft of the report that EPA provided to BLM was in February 2008, which was when [REDACTED] distributed the draft to [REDACTED] and others for review and comments. [REDACTED] identified Cal/DTSC as one of the agencies that reviewed and commented on draft copies of EPA's CCMA-AEHHRA report.

Neither [REDACTED] nor [REDACTED] thought that there was a conflict of interest between EPA and BLM in the procedures that were followed with the review of the draft copies of EPA's CCMA-AEHHRA report.